



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET - SUITE 300

DENVER, CO 80202-2466

<http://www.epa.gov/region08>

DOCKET NO.: CWA-08-2003-0012

IN THE MATTER OF:

DAKOTA, MINNESOTA, AND EASTERN
RAILROAD CORP.

Respondent

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FINAL ORDER

Pursuant to 40 C.F.R. § 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

NOVEMBER 26, 2002
DATE

SIGNED
Alfred C. Smith
Regional Judicial Officer



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

DOCKET NO.: CWA-08-2003-0012

In the Matter of:)	
)	
Dakota, Minnesota & Eastern Railroad Corporation)	EXPEDITED CONSENT AGREEMENT
)	
Respondent.)	

Complainant, United States Environmental Protection Agency, Region VIII, and Respondent, Dakota, Minnesota & Eastern Railroad Corporation, by their undersigned representatives, hereby settle the civil cause of action arising out of violations of the Spill Prevention Control and Countermeasures (SPCC) Plan regulations found during an inspection on September 20, 2001, and agree as follows:

The Clean Water Act (the Act), as amended, 33 U.S.C. § 1321(b)(6), authorizes the Administrator of EPA to assess administrative penalties against any person who violates the oil pollution prevention (SPCC) regulations, promulgated at 40 CFR Part 112 under Section 311(j) of the Clean Water Act, 33 U.S.C. § 1321(j). This authority has been properly delegated to the undersigned EPA official.

Respondent owns and/or operates a rail yard, fueling and maintenance yard, Huron Maintenance Facility, located at 420 Commercial Street NE, Huron, South Dakota.

Respondent admits its facility is subject to the SPCC regulations.

Respondent agrees to correct the items cited on the attached List of SPCC Violations within thirty (30) days unless an extension for achieving compliance is granted by EPA at its

discretion.

Respondent admits that EPA has jurisdiction in this proceeding.

Respondent waives its right to a hearing before any civil tribunal, to contest any issue of law or fact set forth in this agreement.

This agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement.

This Agreement contains all terms of the settlement agreed to by the parties.

Respondent consents and agrees to the assessment of a civil penalty of \$1,600.00, which shall be paid by sending, via certified mail, a cashier's or certified check for that amount, payable to "Oil Spill Liability Trust Fund" along with a signed copy of this Agreement, to:

Jane Nakad
Technical Enforcement Program (8ENF-T)
USEPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

Respondent further agrees and consents that if Respondent fails to pay the penalty amount as required by this agreement once incorporated into the final order, or fails to make the corrective measures to obtain compliance as represented, this agreement is null and void, and EPA may pursue any applicable enforcement options.

The undersigned representative of Respondent certifies that he/she is fully authorized to

enter into the terms and conditions for this agreement and to bind Respondent to the terms and conditions of this agreement.

The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.

Each party shall bear its own costs and attorneys fees in connection with this matter.

This Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations described in this agreement.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION VIII,
Office of Enforcement Compliance and Environmental Justice, Complainant.**

By : **SIGNED**
Connally Mears, Director
Technical Enforcement Program

Dakota, Minnesota & Eastern Railroad Corporation, Respondent.

By: **SIGNED**

Name: **Michael R. Bail**

Title: **Mgr. Safety, Training and Haz-Mat**

**For Kevin V. Schieffer
President and CEO
Dakota, Minnesota & Eastern Railroad Corp**

List of SPCC Violations

SPCC Plan [40 C.F.R. § 112.3]:

Failure to prepare and implement a facility SPCC Plan in accordance with 40 C.F.R. § 112.7.

The Huron Maintenance Facility's SPCC Plan was found to be deficient in the following areas:

The SPCC Plan was not reviewed every three years as required by 40 C.F.R. § 112.5(b).

Supports for above ground piping not addressed as required by 40 C.F.R. § 112.7(e)(3)(iii).

Personnel briefings and spill prevention briefings are not addressed as required by 40 C.F.R. § 112.7(e)(10)(i,iii).

The facility technical, implementation violations are:

No secondary containment for all oil storage tanks in violation of 40 C.F.R. § 112.7(c) and 112.7(e)(2).

Lacks method to warn vehicles of exposed piping in violation of 40 C.F.R. § 112.7(e)(3)(v).

No secondary containment for truck loading/unloading areas in violation of 40 C.F.R. § 112.7(c) and (e)(4)(ii).

Facility is not fenced in violation of 40 C.F.R. § 112.7(e)(9)(i).

Pooled oil and oil-saturated ground in the locomotive fueling area.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED CONSENT AGREEMENT/FINAL ORDER** in the matter of **DAKOTA, MINNESOTA & EASTERN RAILROAD CORP., DOCKET NO.: CWA-08-2003-0012** was filed with the Regional Hearing Clerk on November 26, 2002.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Michael Risner Enforcement Attorney, U.S. EPA - Region VIII, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt to:

Kevin V. Schieffer
President and CEO
Dakota, Minnesota & Eastern Railroad Corp.
337 22nd Avenue South
Brooking, SD 57006

and

Commander
Finance Center (OGR)
U.S. Coast Guard
1430 A Kristina Way
Chesapeake, VA 23326

November 26, 2002

SIGNED

Tina Artemis
Regional Hearing Clerk

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON NOVEMBER 26, 2002.